

APPEAL NO. 041451
FILED JULY 22, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 2, 2004. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 13th quarter, April 1 through June 30, 2004. The claimant appeals, disputing the determination of nonentitlement. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative rule requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) by complying with Rule 130.102(d)(5). The parties stipulated that the claimant sustained a compensable injury on _____; that the claimant reached maximum medical improvement on May 24, 2000, with an impairment rating of 15%; that he has not commuted any portion of his impairment income benefits; and that the qualifying period for the 13th quarter of SIBs was from December 19, 2003, through March 18, 2004.

The hearing officer did not err in determining that the claimant did not satisfy the good faith requirement in the qualifying period for the 13th quarter. The hearing officer was not persuaded that the evidence presented by the claimant was sufficient to satisfy the requirements of Rule 130.102(e). Rule 130.102(e) provides that, except as provided in subsection (d)(1), (2), (3) and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. That subsection then lists information to be considered in determining whether a good faith effort has been made. Good faith effort is a factual determination for the hearing officer to resolve. There is sufficient evidence to support the finding that the claimant failed to make a good faith effort to obtain employment commensurate with his ability to work during the qualifying periods at issue. The hearing officer noted that the claimant's job search had no real focus or plan, the claimant did not invest a great deal of time into seeking employment, and although the claimant continues to be physically capable of performing many types of work, the scope of his search was rather limited. Nothing in our review of the hearing officer's determination in that regard reveals that it is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to disturb that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, we affirm the determination that the claimant is not entitled to SIBs for the 13th quarter.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL RAY OLIVER, PRESIDENT
221 WEST 6TH STREET, SUITE 300
AUSTIN, TEXAS 78701-3403.**

Margaret L. Turner
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Thomas A. Knapp
Appeals Judge